IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3172 OF 2006

Satish Yeshwant Dalvi .. Applicant
Versus
State of Maharashtra .. Respondent

Mr.Shirish Gupte, Senior Advocate with Nitin Sejpal and Ms.Pooja Bhojane for appelicant
Mrs.M.M.Deshmukh, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 29th August 2006

P.C.

. This application is for release of the applicant who has been arrayed as accused in C.R.No.53 of 2001 registered with Mahim police station for offences punishable under section 395, 397 read with 41 of I.P.C.

2. The applicant has been put to trial along with other accused in Sessions Case No.1111 of 1992.

3. It appears that during the trial of the same, the applicant who was serving in OTIS India Pvt.Ltd. in its establishment at Mumbai, got an employment offer and went abroad. The trial proceeded in his absence. However, it appears that he applied for permission to go abroad/ leave India but the said application was rejected on 21st January 2006. The applicant attended the trial but remained absent on 20th March 2006. He filed an application for exemption which was heard and rejected by an order passed on 23rd March 2006. The applicant was already abroad and, therefore, the trial court proceeded to cancel the bail and issued non bailable warrant.

4. Mr.Gupte, learned Senior Counsel appearing for applicant submits that upon the

applicant being informed that the trial has reached a stage of recording Section 313 statement of the accused, immediately returned back to India but was detained in custody on 9th August 2006. Thereafter, his application for bail was rejected by the trial court by the order dated 18th August 2006.

5. This matter was placed before me yesterday and in the light of the undertaking by the applicant who has been detained in custody from 9th August 2006, that he will not leave India until his statement is recorded under section 313 I enquired with learned A.P.P. as to whether the statement will be recorded on the next date on which the trial is scheduled before the sessions Judge. Upon instructions from the A.P.P. appearing in the trial court, Mr.Pednekar makes a statement that on 8th September 2006, applicant’s statement under section 313 would be recorded.

6. Mr.Gupte, makes a grievance that the applicant is presently on leave and has to report back to his employer on 25th September 2006.

7. In my view, appropriate course would be to direct the trial court to record statement of the applicant on 8th September 2006 and if the applicant seeks permission to go abroad for employment purpose abroad, such application would be considered on its own merits and in accordance with law, without being influenced by the earlier observations and rejection of the application in January and March 2006. Learned Trial Judge would have been well advised if instead of dealing with an application for being enlarged on bail, after hearing lengthy submissions necessitating passing an equally lengthy order, to have recorded the statement of the accused on the date when he was produced before him. All concerned need to be aware that procedural laws

are handmaid of justice and should not be stretched to such an extent as making it impossible for people who are accused to pursue their employment and career. Application is disposed of.

8. At this stage, Mr.Gupte submits that instead of applicant being made to apply again after the statement is recorded, for bail on the adjourned date, this Court, should consider his application for being enlarged on bail, more so, when the sessions case is pending since 1992 and the applicant has been enlarged on bail all through out.

9. In all fairness, the learned A.P.P. does not dispute that the applicant was on bail till March 2006 when his application for exemption was rejected and, thereafter, he was taken in custody when he reached India on 9th August 2006.

10. Considering that the applicant has deep roots in Mumbai and is a family man, he has immovable property in Mumbai, where, now his family consisting of wife and children are residing and the applicant is serving abroad on employment permit, ends of justice would be met if the applicant is enlarged on bail. The applicant would be entitled to apply for return of his passport after his statement is recorded and subject to such orders and directions of sessions court. Hence, following order:-

i) Applicant is enlarged on bail in connection with C.R.No.53 of 2001 registered with Mahim Police Station in the sum of Rs.20,000/- with one or two local sureties in the like amount.

ii) After recording of his statement on 8th September 2006, the applicant is at liberty to apply for return of his

passport which will be subject to orders of the trial court.

iii) The bail is granted subject to condition that the applicant will remain present before the concerned investigating officer as and when summoned till 8th September 2006.

iv) The order of bail will be given effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he stays or proposes to stay abroad and in India after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

v) The bail is granted subject to

condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

vi) The applicant shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

vii) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

viii) Application is disposed of in above terms.

ix) Parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)